

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WESTFIELD INSURANCE COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00690

JIMMY BUCKNER,

Defendant.

MEMORANDUM OPINION AND ORDER

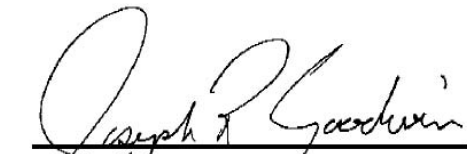
On October 5, 2005, the Clerk entered a default against the defendant, Jimmy Buckner, who has not responded to the default. Presently pending before the court is the plaintiff's motion for a default judgment [Docket 7]. The defendant has not responded to this motion. For the reasons explained herein, the court **GRANTS** the motion and **DECLARES** that the insurance policy at issue provides no coverage for the claims asserted against the defendant by Archie R. Caldwell and that the plaintiff has no duty to defend or indemnify the defendant as to those claims.

Once default has been entered, the determination of whether to enter a default judgment rests within the sound discretion of the court. *Papagianakis v. Samos*, 186 F.2d 257, 263 (4th Cir. 1950). When the defendant fails to appear or answer a complaint seeking a declaratory judgment, the court should consider every material fact in the complaint as true. 22A Am. Jur. 2d *Declaratory Judgments* § 227 (2002). In suits for declaratory relief, however, the failure to appear or answer does not dispense with the court's duty to interpret the relevant contract language and determine the propriety of the requested relief. *Id.*

The underlying claims in this case were presented by Mr. Caldwell to the defendant regarding damage sustained to a 2003 Oak Knoll four-bedroom mobile home. (Pl.'s Mot. for Decl. J. 2.) The alleged damages relate to the defendant's transportation, construction, and negligent maintenance of the home. Coverage for the kinds of claims made by Mr. Caldwell are clearly excluded from the insurance policy in issue. As a result, the court **DECLARES** that the insurance policy issued by the plaintiff to the defendant provides no coverage for Mr. Caldwell's claims and that the plaintiff has no duty to defend or indemnify the defendant as to those claims.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 5, 2005


A handwritten signature in black ink, reading "Joseph R. Goodwin", is written over a horizontal line.
JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE